

KICA/TOKI ARB Work Group:

Review of current ARB authority, responsibilities, governance and processes ... and development of first ideas for a way forward

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KIAWAH ISLAND
COMMUNITY
ASSOCIATION

TOWN OF
Kiawah Island[®]
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1988

KICA/TOKI ARB Work Group Mission

- This work group is charged with identifying concerns around the cost, consistency and transparency of the existing architectural control processes on Kiawah:
 - Expiration on 12/4/23 of the Development Agreement between TOKI and Kiawah Resort Associates, L.P. (managed by South Street Partners and referred to herein as the “Developer” or “ARB”);
 - After almost 50 years and Kiawah nearing build-out, homeowners still have minimal input into its own architectural control; and
 - Although it was envisioned that architectural control of Kiawah would be transitioned to KICA at the Developer's option, it remains with the Developer.
- This work group will analyze facts, understand circumstances, and provide transparency and education.
- The group will offer recommendations for improvements to Kiawah's architectural control system.
- This work group will not tackle individual problems or disputes with the ARB.

KICA/TOKI ARB Work Group Project Plan

Objectives and Action Plan:

Phase 1

- Identify the documents and their relevant passages which govern or relate to architectural control on Kiawah.
- Identify how architectural control is presently addressed by the ARB, KICA and TOKI, jointly and separately, especially related to cost, consistency and transparency.
- Identify the benefits and weaknesses of existing architectural control on Kiawah.
- Engage with the community for feedback on current architectural control practices.

Phase 2

- Identify opportunities for “quick fixes” in KICA, TOKI and ARB processes, and suggest improvements to minimize inconsistent and opaque decision-making by the ARB.
- Formulate detailed long-range recommendations for scope, structure, governance, and reporting of a future architectural control function on Kiawah.

Work Group Members:

- KICA: Kevin Donlon, Dave DeStefano, Beverly Fieroh, Madeleine Kaye
- TOKI: Brad Belt, Michael Heidingsfelder, Marc Camens, Peter Schneider

Key Findings

- Architectural control has benefited Kiawah in many ways and has contributed to its status as a world class destination with enhanced property values.
- KICA homeowners have minimal control over the ARB requirements for their island.
- Many homeowner concerns relate to a perceived lack of consistency and fairness as well as a high degree of subjectivity in the decision making of the ARB.
- Architectural and compliance processes are managed by the ARB, KICA and TOKI through formal and informal agreements and practices.
- Expiration of the Development Agreement in and of itself will bring no substantive change to the ARB or other architectural control practices.
- A transfer of architectural control from the Developer to KICA may be achieved only with (i) Developer cooperation, (ii) a change of covenants by a majority of property owners or (iii) potentially a legal challenge.

How is architectural control presently addressed on Kiawah?

- Architectural control generally refers to aesthetic matters and site development distinct from zoning ordinances and building codes and is typically administered by homeowners associations (HOAs).
- At the time of purchase, all property owners agree to a system of architectural control in the community.
- The current ARB is not a separate legal entity; it is an organizational department of the Developer.
- On Kiawah, architectural control includes approval for all new construction and exterior alterations, as well as landscaping standards and site development, and is primarily overseen by the ARB on behalf of the Developer.
- Some KICA rules and regulations also address design issues.
- TOKI oversees municipal zoning, land use and building codes.
- Kiawah's ARB is comprised of architects, landscape architects and a community member selected by the Developer and one board member appointed by the KICA Board.

What are the important agreements and documents?

- [Kiawah Island General Covenants](#) (aka Developer Covenants)
- [Single Family](#), [Multifamily](#) and [Patio](#) Covenants
- [KICA Community Association Covenants](#)
- [KICA Rules & Regulations](#)
- [KICA “Landscape Management Guidelines for Members”](#)
- [TOKI Ordinances](#)
- [2013 Amended and Restated Development Agreement between the Developer and TOKI](#) (expiring 12/4/23)
- [ARB’s “Designing With Nature” document](#)
- Other deeds and property documents

How the *General Covenants* provide authority to the Developer

- Article II provides that the Developer may establish and amend objective standards and guidelines related to the design, size and location of dwellings and other structures.
- Article II, Paragraph 1 provides that no building, fence or other structure may be erected, placed or altered, as well as any plans related thereto, without prior approval of the Developer, and that no alteration to the exterior appearance of any building or structure may be made without the approval of the Developer.
- Article III of the General Covenants sets forth environmental control restrictions and also gives the Developer the right to approve removal of trees greater than 6 inches in diameter.
- Article VII sets forth the explicit and sole remedy for violations as the right of the developer, KICA and neighboring property owners to proceed “at law or equity” (i.e., sue) to compel compliance. Additionally, the Developer or Association may enter homeowners’ property to abate or remove a violation at the expense of the homeowner.
- Article VII provides the manner in which the covenants may be amended, which is by an instrument signed by a majority of owners of lots affected by any change being made.

How the *Development Agreement* provides authority to the Developer

- Paragraph 13, Subsection (c) under Residential Uses, describes how the ARB will apply prescribed building development standards, including lot area, lot width, or setbacks. Subsection (f) applies to buffers, fencing and signage. Subsection (g) references Designing With Nature for tree replacement guidelines. Subsection (h) refers to aesthetics, and states that the ARB “shall have sole and exclusive jurisdiction with regard to the standards and guidelines set forth in the latest edition of “Designing with Nature,” as well as the granting of “variances” from the building development standards for undeveloped lands.
- TOKI agrees that it will not establish an architectural review body during the term of the agreement that replaces or duplicates the jurisdiction of the ARB.
- When the Developer decides to turn over control of ARB to KICA, the Developer will cooperate with the KICA Board to accomplish an “orderly and staged transition.”
- Paragraph 16, Subsection (b) applies to Beachfront Standards.

How other sources suggest ARB authority

- Through informal processes agreed upon by KICA and TOKI staff, e.g., related to zoning and permits.
- Through KICA's and TOKI's requirement that members comply with certain ARB guidelines.
- By TOKI acknowledging that ARB approval may be required prior to TOKI building permit issuance.
- Through the “Maze of Ks” on the TOKI and KICA websites.
- Through the close working relationship between the KICA Livability function and the ARB.
- Through the 1995 Indenture Deed from Developer to TOKI for a portion of the Kiawah Island Parkway.
- Through the 1998 Agreement Imposing Covenants and Restrictions and Grant of Rights and Easements as to Beachwalker Road, between the Developer and TOKI.

KICA's relationship with the ARB

- KICA Board - Pursuant to the covenants, the Developer appoints a director to the KICA Board of Directors. Currently, this appointee is a Developer employee who also serves as the Chair of the ARB.
- ARB - KICA can appoint one ARB board member as an advocate for members. KICA receives no reimbursement for its participation in the ARB. KICA's employees receive no financial compensation from the Developer. The ARB Board includes another property owner representative, who is appointed by the Developer. The remaining board members include experienced licensed architects and a licensed landscape architect, again appointed by the Developer.
- Permitting - KICA and the ARB have developed an intertwined system to issue and monitor work approvals based on mutual understanding.
- Compliance matters - KICA's Livability Department interacts with the ARB closely to enforce overlapping rules and regulations.
- Financial - in 2008, anticipating that the ARB function would transition to KICA, the KICA board agreed to pay the Developer approximately \$32k per year to facilitate such transition. That transition has not happened. As of 2023, KICA's payment to the ARB (approximately \$420K) has been discontinued. No other payments or cost sharing agreement currently exists between the organizations.
- KICA has minimal control over Designing with Nature or other rules, decisions and restrictions imposed by the ARB.

TOKI's relationship with the ARB

- The Development Agreement is between TOKI and the Developer.
- TOKI's Building and Planning Department requires permit seekers to have plans approved by the ARB prior to submitting them to TOKI to minimize/avoid duplicative and costly reviews. This is not a technical requirement; rather it is a currently followed practice to increase efficiency among all parties involved.
- The ARB and TOKI collaborate on site design issues when ARB standards and zoning codes conflict.
- TOKI inspections at project completion pertain only to the structure and its adherence to building codes and approved plans. Any ARB inspection is separate from that of TOKI and is between the owner and the ARB.
- TOKI's Board of Zoning Appeals (BZA) examines the ARB acceptance, rejection or conditions of a variance prior to a BZA hearing. The intent is to maximize process efficiency; it is not a technical requirement.
- ARB and TOKI collaborate on review requests for combination/resubdivision of lots and parcels.

Architectural control processes: Construction & permitting

KICA, TOKI and ARB staff work cooperatively in the permitting of new work. Examples:

- Each entity requires separate permits or approvals for new construction and certain renovation projects. Timing of the permitting process includes a KICA encroachment permit, an ARB permit, then a TOKI building permit.
- The ARB collects and manages all construction deposits associated with construction. KICA can seek funds from an ARB deposit for the repair of KICA common property should a contractor fail to make required repairs to KICA common property.
- KICA and the ARB share real time data across the web-based Citizenserve software to link together four separate areas of encroachment, safety, KICA compliance and ARB compliance. KICA and the ARB each pay for its own Citizenserve licenses.
- TOKI pays for a separate license due to FOIA concerns; it does not share any access or records with KICA or the ARB
- Other crossovers arise in areas such as driveways and drainage, dune and lake edge management, and are managed on an ad hoc basis by KICA, TOKI and ARB staff.

Architectural control processes: Compliance

- Personnel from KICA's Livability department and the ARB may coordinate actions on a case-by-case basis, but there are few clear guidelines or documented operating procedures.
- KICA alone controls the main gate. Gate-pass accessibility for a contractor is a key enforcement tool. KICA has supported the ARB's enforcement of its rules by limiting or denying gate access, although rarely executed. KICA also uses this enforcement tool independently of the ARB.
- Fines assessed by either KICA or the ARB are collected and managed independently.

Preliminary Work Group Observations

What we like:

- Kiawah's architecture and overall appearance is well regarded on and off island.
- Key ARB Staff are degreed and licensed.
- Many components of architectural control are well documented and applied.
- TOKI, KICA and ARB staffs work cooperatively and effectively.
- Deposits collected by the Developer aid in compliance.

What concerns us:

- Community members believe ARB's assumed authority is not supported by governing and other documents.
- Architectural design and landscape standards are perceived to be applied unequally.
- ARB rulings can appear arbitrary and decision making is not transparent.
- Homeowners have minimal input in ARB policies and governance.
- Contractor confusion regarding rules and loss of island access privileges.
- ARB's claimed authority to assess fees and penalties, and delayed return of deposits.

Recommended Next Steps For Phase One

- Make this preliminary report and its findings available to the community and seek ideas and feedback for use in Phase Two via:
 - Podcast(s)
 - Open Town Halls
 - Charettes and/or Workshops
- TOKI should review existing informal practices related to zoning and building permitting where ARB requirements are accommodated.
- KICA should review current rules and regulations wherein ARB requirements are referenced.
- KICA should review all informal arrangements with or relating to the ARB to better understand overlap and intersections and develop a plan to manage compliance independently.

Recommended Next Steps For Phase Two

Develop detailed recommendations, including:

- Benchmarking of Kiawah's architectural control system to similar communities.
- Options for achieving a transition with or without Developer support.
- Proposals for:
 - an appropriate scope of architectural control;
 - the governance structure for a new architectural review regime;
 - an optimal organization and staffing; and
 - legal and operational specifics of a transition.